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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOEL GONZALEZ GARCIA,

Defendant and Appellant.

H049571

(Monterey County
Super. Ct. No. 20CR008474)

MEMORANDUM OPINION¹

Defendant Joel Gonzalez Garcia pleaded no contest to two counts of gross vehicular manslaughter while intoxicated (Pen. Code, § 191.5, subd. (a)); counts 1 and 2)² and driving under the influence of alcohol causing injury (Veh. Code, § 23153, subd. (a); count 3). The trial court sentenced Garcia to the midterm of six years on count 1, one-third the midterm (two years) on count 2, and one-third the midterm (eight months) on count 3, to run consecutively, for an aggregate term of eight years and eight months in state prison. Garcia was 21 years old at the time of the offense.

Garcia contends that under the newly-amended version of section 1170, subdivision (b), his sentence must be vacated and the case remanded for resentencing.

¹ We resolve this case by memorandum opinion under California Standards of Judicial Administration, section 8.1. (See also *People v. Garcia* (2002) 97 Cal.App.4th 847, 853-855.) The facts of the offense are immaterial to this appeal.

² Further undesignated statutory references are to the Penal Code.

Effective January 1, 2022, section 1170 was amended in several ways. (See *People v. Flores* (2022) 73 Cal.App.5th 1032, 1038 (*Flores*) [citing Sen. Bill No. 567, Stats. 2021, ch. 731, § 1.3].) Under the amended version of section 1170, when a statute specifies three possible terms, “the court shall . . . order imposition of a sentence not to exceed the middle term, except as otherwise provided in [section 1170, subdivision (b)(2)].” (§ 1170, subd. (b)(1).) Section 1170, subdivision (b)(2) provides that the trial court may impose a sentence exceeding the middle term “only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term” Senate Bill No. 567 also added subdivision (b)(6) to section 1170, which states: “Notwithstanding [section 1170, subdivision (b)(1)], and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if any of the following was a contributing factor in the commission of the offense: [¶] ... [¶] (B) The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense.” Section 1016.7, subdivision (b) defines “youth” as “any person under 26 years of age on the date the offense was committed.”

The Attorney General correctly concedes that the amended sentencing provisions apply to Garcia. The amended provision of section 1170, subdivision (b) applies retroactively in this case as an ameliorative change in the law that applies to all nonfinal convictions on appeal. (*Flores, supra*, 73 Cal.App.5th at p. 1039, citing *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 308.) Garcia was under the age of 26 at the time he committed the offense, and the trial court did not find that the imposition of the lower term would be contrary to the interests of justice.

Accordingly, we will reverse the judgment and remand the matter for resentencing under the newly-amended section 1170.

DISPOSITION

The judgment is reversed. The matter is remanded to the trial court for resentencing under Penal Code section 1170, as amended by Senate Bill No. 567.

Greenwood, P. J.

WE CONCUR:

Grover, J.

Wilson, J.

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No. H049571